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Subject: Cross-Cutting Issues News for September 14, 2016



Cross-Cutting Issues News for September 14, 2016

Bloomberg BNA Daily Environment Report™

NEWS

Climate Change

Judge Questions Mass. Attorney General's Objectivity on Exxon

A federal judge questioned the objectivity of Massachusetts Attorney General Maura Healey in her pursuit of a lawsuit against Exxon Mobil Corp. and a climate-change related subpoena (Exxon Mobil Corp. v. Healey, N.D. Tex., No. 4:16-cv-00469,...

Climate Policy

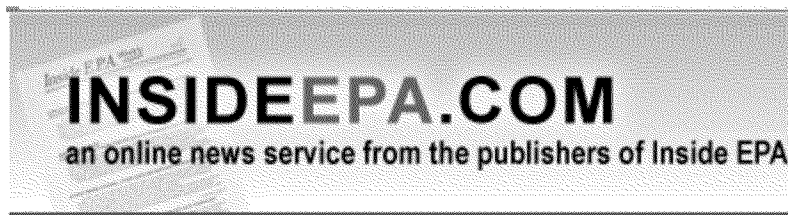
U.K. Urged by Adviser to Devise Carbon-Removal Strategy

The U.K. should develop strategies for removing carbon dioxide from the atmosphere in order to meet its obligations under the first internationally binding agreement to fight global warming, the government's climate change adviser...

EPA

EPA Wasted Large Sum on Improper Purchasing: Audit

The Environmental Protection Agency could have saved nearly \$600,000 in fiscal year 2015 by ordering goods and services through governmentwide purchase cards, rather than purchase orders, the EPA's inspector general said Oct. 13....



Shimkus Energy Panel Chairmanship May Boost Coal Ash, Superfund Bills

If Rep. John Shimkus (R-IL) succeeds in his bid to chair the Energy & Commerce (E&C) Committee in the next Congress, the lawmaker's prior comments and bill sponsorship suggest he could prioritize legislation including measures that would revise EPA's coal ash disposal rule and potentially alter aspects of the Superfund program.



OIL AND GAS:

Dakota Access highlights tribes' split on energy development

Published: Thursday, October 13, 2016

While the Standing Rock Sioux Tribe continues to fight against the Dakota Access pipeline, another tribe wants to make it easier to drill for oil and natural gas on its land.

The Southern Ute Indian Tribe of southwestern Colorado has more natural gas and oil wells than it has members, and it wants more.

The 1,600 wells the tribe owns across four states make it one of the richest in the country.

During a field hearing in New Mexico last week, James Olguin of the Southern Ute Indian Tribe testified that federal oversight impedes tribal permitting for oil and gas, and House Natural Resources Chairman Rob Bishop (R-Utah) agreed ([Greenwire](#), Oct. 5).

"Without a prolonged effort to take control of our natural resources, the Southern Ute Indian Tribe would not be the economic powerhouse it is today," Olguin said.

Whether tribes want to implement their own oil and gas permitting or stop all pipeline construction, they agree on their desire for more control of their lands (Catherine Traywick, [Bloomberg](#), Oct. 12). — **CS**

DAKOTA ACCESS:

Farmers get help hotline amid pipeline protests

Published: Thursday, October 13, 2016

North Dakota's Agriculture Department has responded to the protests against the Dakota Access oil pipeline by setting up a hotline to help affected farmers and ranchers south of the Bismarck-Mandan area.

The problem for many producers who need to finish seasonal work before winter is finding willing truck drivers and custom silage-chopping services.

"We are appealing to those who can provide these services to contact the hotline," said Agriculture Commissioner Doug Goehring.

Thousands have come out to protest Texas-based Energy Transfer Partners' construction of a \$3.8 billion, 1,200-mile pipeline from North Dakota to Illinois.

A protest camp spokesman said it was "not true" that protesters were harassing farmers or farm workers.

"We've had quite a few farmers and ranchers stop by the camp to show their support and thank us for taking a stand against Big Oil," said spokesman Cody Hall.

But rancher Matthew Rebenitsch said many people are locking their doors and carrying guns after reports of intimidation, a claim Hall denied (Blake Nicholson, AP/Des Moines Register, Oct. 12). — **AS**

ENDANGERED SPECIES:

FWS to downlist Columbian white-tailed deer

Published: Thursday, October 13, 2016

This story was updated at 2:34 p.m.

The Fish and Wildlife Service is expected to announce today that the Columbian white-tailed deer will be downlisted from an endangered to a threatened species.

The proposed action applies to the deer found in the Pacific Northwest and to a subgroup of the animal found in southwestern Washington state and Oregon's Clatsop and Columbia counties.

The announcement comes a year after federal wildlife officials publicly noted the deer's significant rebound. The deer was deemed endangered in 1967, and since then its population has nearly doubled to 900.

The Columbian white-tailed deer was one of the first species listed under the Endangered Species Act.

FWS spokesman Brent Lawrence said taking the species off the list is "cause for celebration."

"This was only a success because of collaborative conservation. It took the combined efforts of the Cowlitz Indian Tribe, states of Washington and Oregon, many volunteers and the service working together for many years to turn the tide for this deer," Lawrence said (Andrew Theen, Portland Oregonian, Oct. 13). — **AS**

ALASKA:

Murkowski uses debate to showcase mastery of fisheries issues

Emily Yehle, E&E reporter

Published: Thursday, October 13, 2016

The first debate in Alaska's Senate race focused on the minutiae of fisheries policy, with Sen. Lisa Murkowski (R) casting herself as the expert among a field of lesser-known rivals.

The Senatorial Fisheries Debate is a two-decade-old tradition unique to Alaska, where the fishing industry is the largest employer. Murkowski clearly saw it as an opportunity to showcase her fisheries knowledge in a race where she faces four opponents, including former GOP rival and current Libertarian candidate Joe Miller.

"I have been immersed in fishery issues since I first came to the U.S. Senate," Murkowski said, pointing to her role in passing a bill last year to implement an international treaty aimed at combating illegal fishing. "My direction, though, in Washington has always been based on what I hear from our fishing families and our fishing communities."



Alaskan candidates for senator, from left to right: Sen. Lisa Murkowski (R) and Margaret Stock (I). Photos courtesy of Wikipedia.

Miller, who is seen as Murkowski's strongest opponent, did not attend last night's debate in Kodiak, electing instead to travel through southeast Alaska.

Murkowski, the heavy favorite, faced Democrat Ray Metcalfe and independents Margaret Stock and Breck Craig. The two-hour debate was largely congenial, with a panel asking the candidates for their thoughts on everything from fishing quotas to incidental discharge regulations.

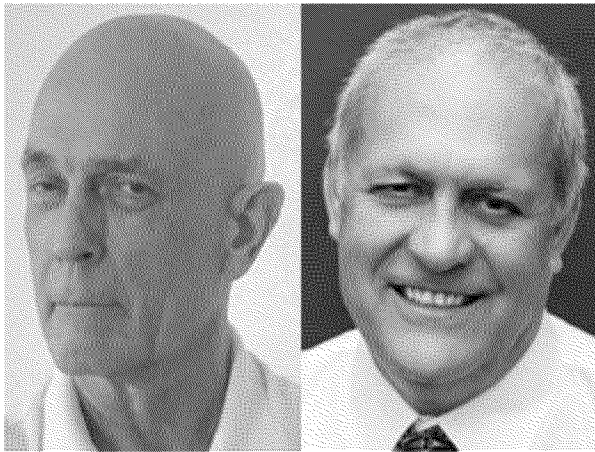
Metcalfe and Craig acknowledged their ignorance on several fisheries issues, while focusing on those they knew best. Craig called for rules that allow fishermen to sell unintended catch, or bycatch. Metcalfe railed against catch shares, calling it the "privatization of fishing rights."

But Stock used the debate to present herself as a "practical problem solver" and attorney able to grasp complex issues, including those important to fishermen. Both she and Murkowski streamed the debate on their Facebook pages.

Stock repeatedly called for more funding of the Coast Guard as Arctic ice melts and traffic increases.

"Climate change is real. I'm not a career politician. I do believe in science," she said. "We're particularly susceptible because we have colder waterways."

The economic future of fishermen loomed large. Catch shares — in which fishermen get annual quotas — have been credited with enabling sustainable fishing, but critics say they have also resulted in expensive quotas that are out of reach for the younger generation.



Alaskan candidates for senator, from left to right: Ray Metcalfe (D) and Breck Craig (I). Photos courtesy of the Metcalfe and Craig campaigns.

Stock compared it to the plight of family farms, calling for structural changes "to prevent conglomerates." Metcalfe and Craig said the catch share system needed an overhaul.

"I think we need to get back to the common ownership of a commonly held resource," Metcalfe said.

The debate also featured a period where candidates could ask each other questions. Metcalfe veered off-topic — and earned a rebuke from the debate moderator — when he questioned Stock on why she accepted an endorsement from former Sen. Mark Begich (D-Alaska), whom he accused of corruption.

"I'm very pleased to let everyone know that Mark Begich has endorsed my campaign," she said, calling the accusation "an interesting story, a fish story."

Stock used her turn to criticize Murkowski for what she has done to address concerns

about whether Canadian-based mines are polluting Alaskan waters ([E&ENews PM](#), June 27). She said recent agreements to work with Canada have no "teeth" and accused Murkowski of being "unwilling or unable" to push for an international investigation.

Murkowski defended her record, delving into the intricacies of getting the State Department on board.

"We are making headway, but it has been very, very difficult with a State Department that has not believed that this has the requisite emergency," Murkowski said.

But even Murkowski was caught off guard on a much simpler question, during one of the debate's lighthearted speed rounds. How many jobs does the Alaskan seafood industry provide, she was asked.

Murkowski and Stock expertly sidestepped the question, reiterating that the industry was a large employer — earning a jovial "that's not fair!" from Craig.

The answer: 60,000.

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PEOPLE:

Meet Alaska's renewable energy 'imagineer'

Geof Koss, E&E reporter

Published: Thursday, October 13, 2016



Chena Hot Springs Resort owner Bernie Karl shows baled recycled materials bound for export and reuse during his annual renewable energy fair in August. Photo by Geof Koss.

CHENA HOT SPRINGS RESORT, Alaska — Follow a two-lane road undulated by frost heaves outside of Fairbanks for an hour, and the road eventually dead-ends at an oasis that offers a surprising mix of creature comforts for travelers who journey to this rural outpost in the Last Frontier State.

Feeling the biting cold of the Alaskan winter? Take a dip in the resort's namesake natural mineral hot springs, which average 106 degrees Fahrenheit and have attracted visitors for centuries.

Want to cool off in the summer months, when temperatures can swell to the 90s? Don a heavy parka and sample an appletini in the resort's singular Aurora Ice Museum, a man-made cavern illuminated by multicolored lights that features bar stools carved from ice and covered with caribou skins.

Like your food fresh? Chena Hot Springs grows its own tomatoes year-round in greenhouses that are impervious to temperatures that can reach 60 below zero. Massages are also available, as well as sightseeing tours via bicycle, sled dogs, snowmobile and airplane, depending on the season.

Such amenities draw thousands annually to Chena Hot Springs, whose remote location creates superb conditions for viewing the aurora borealis, or northern lights, a phenomenon that occurs when charged particles from the sun collide with the Earth's atmosphere. At the lodge, guests can order "aurora wake-up calls" during the night, when the blue, green, red and purple light displays that stretch across the sky are best

viewed.

But Chena Hot Springs is more than just a roadside attraction for tourists; it's equal parts alternative energy laboratory, experiment in sustainability and all-ages classroom, as well as a full-time "imaginarium" for Bernie Karl, who along with his wife, Connie Parks-Karl, has owned and operated the resort since purchasing it from the state in 1998.

At the time, the state was losing \$1 million annually, in part because of reliance on diesel fuel to generate electricity. Karl wasted no time tapping the geothermal resources below ground, using an innovative technology to harness energy that was previously considered too cool to be a viable power source.

Renewable energy produced on site now powers the entire resort, which has grown into a local landmark that draws tourists from around the world to the remote Alaskan interior each year.

"The good Lord has blessed us with everything to use," said Karl, a squat, bearded and gregarious figure, as he led visitors on a tour of the resort during his annual renewable energy fair recently. "But if you don't share this knowledge, what good is it?"

Fond of Albert Einstein's famous proclamation that "imagination is more important than knowledge," the 63-year-old entrepreneur once described Chena Hot Springs as "not just a resort, but an experimental workshop where imagination and engineering meet."

"We're imagineering new ways to face the growing needs for energy and food in an uncertain world," Karl wrote in 2011. "We're looking at new ways to observe nature and mimic the perfection, biomimicry. Nature will reveal all her secrets to us, we simply have to listen."

'Beyond description'

Karl returned to the theme repeatedly during the two-hour tour, clutching a coffee cup the whole time and speaking almost nonstop with his trademark enthusiasm.

"It's insane if we don't use the knowledge that's here. Shame on us!" he bellowed at the small group, which included Senate Energy and Natural Resources Chairwoman Lisa Murkowski (R-Alaska) and her family, as he demonstrated a portable generator that produces electricity and heat from burning wood pellets. "I believe there should never be another landfill. There should never be another smokestack!"

For Karl, the generator holds such potential to reshape the lives of rural Alaskans that he paid \$8,000 for a first-class plane ticket to transport a display model from Sweden. He hopes to eventually sell 1,000 of the \$10,000 units to the state for use in the remote, isolated villages that historically have relied on costly diesel shipments to produce power.

"They have to change bush Alaska," he said. "It's not sustainable."

Sustainability is the guiding principle in all of Karl's endeavors. His resourcefulness emerged while he was growing up on a farm in Peoria, Ill., as the sixth of 16 children. By his own description, Karl had "zero formal education" but credits his father for instilling the desire for knowledge in his children. "Dad taught the kids how to read," Karl said in an interview.

Karl came to Alaska in 1974, launching a diverse career that included helping build the Trans-Alaska oil pipeline, a stretch in mining, and later operating a string of scrap and recycling businesses.

Others had tried and failed to make Chena's hot springs a profitable venture, but Karl and his wife jumped at the chance to try their hands when the state offered it for sale in 1998.

He recognized the opportunity beneath his feet for cutting the resort's greatest expense: diesel fuel for power generation. It's a common dilemma in Alaska, whose remote rural residents often live isolated from a centralized electric grid. While the state is awash in fossil fuels and renewable energy sources, its residents pay some of the highest electricity costs in the nation because of the expense of transporting diesel vast distances to remote outposts (*Greenwire*, Sept. 9).

But first Karl had to overcome a major technical hurdle. Geothermal waters at Chena Hot Springs never reach above 165 degrees Fahrenheit — far below the 220 degrees needed to drive traditional steam turbines.

The facility's groundbreaking 400-kilowatt power plant — since expanded to 730 kW — uses a refrigerant that has a lower boiling point than water to compensate for the temperature differential. By passing this fluid through a heat exchanger with 165-degree water from the site's geothermal wells, the refrigerant turns to vapor, which spins the turbine.

The plant, which was developed in partnership with the private sector, the state of Alaska and the Department of Energy, is the lowest geothermal temperature resource to be used to produce power in the world. Since it started operations in 2006, the cost of producing power has fallen from 30 cents per kilowatt-hour using diesel generation to less than 6 cents per kWh.

The implications are tantalizing for a state such as Alaska, which has huge geothermal potential but, until Karl came along, had not tapped the resource for power. Additional large-scale geothermal projects are under development.

The geothermal plant literally fueled the resort's expansion into a major tourist destination, with 85 year-round employees. It's an especially popular attraction for Asian visitors, who believe it auspicious to conceive a child under the northern lights. Karl

claims that 133,464 children are the result of Chena's magic, including two of his grandchildren.

In addition to managing the lodging and hot springs, Karl operates a separate company that sells energy products and experiments with growing food indoors year-round. A few weeks ago, he showed off his latest creation: a hydroponic grow tower for plants constructed with plastic buckets from Home Depot for \$125.

Later in the tour, he demonstrated a greenhouse of tomatoes growing in a mixture of biochar and recycled glass from Chena, illuminated by rolling panels of LED lights that he developed.



Karl shows visitors his "million dollar" tomato crop growing in a mix of biochar and recycled glass and illuminated by LED lights on rollers he developed. Chena's greenhouses are powered by geothermal energy produced onsite. Photo by Geof Koss.

"This is a \$1 million crop," he said of the expected 200,000-pound yield. "Now, why can't everybody do this?"

Recycling glass into a growing medium reflects Karl's goal of landfilling as little as possible from the resort, which recycles and exports material for reuse where it can.

"Everything you see around here is recycled," said Karl, as he demonstrated a bale of scrap tires that were destined for the North Slope city of Barrow to be used in an erosion control project. "It's insane. Why wouldn't we use what people are paying to throw away?"

Equally important to Karl is demonstrating the potential reuse of objects that have been cast aside as worthless, such as the rusting hulks of ancient tractors scattered across the property.

"We rebuild one each year just to spark the imagination," he said. "If I only get one kid per year, I've done my job."

Along the way, Karl has become a legend throughout his adopted state. Past speakers at his renewable energy fair include Energy Secretary Ernest Moniz, and attendees at this year's expo — the 11th — included Murkowski; fellow GOP Sen. Dan Sullivan; and Alaska's independent Gov. Bill Walker, who lauded his host as an ingenuous "doer" and "beyond description."

Walker told the crowd his "bucket list" as governor includes holding a Cabinet meeting at Chena Hot Springs, with Karl presiding. "My Cabinet will leave very different than they arrived as a result of what they're going to hear from Bernie Karl," he said.

Murkowski, who has known Karl for years, said she continues to be amazed by his boundless energy.

"He likes to say things like, 'We don't need more engineers, we need more imagineers,'" she told E&E News last month. "And Bernie is the ultimate imagineer. There's no boundaries for Bernie."

Sullivan last month described Karl as an optimist who chooses to focus on the opportunity within a challenge.

"What Bernie Karl always does is he immediately focuses on the opportunity side," he told E&E News. "And you need that, people need that — that's the essence of good leadership, and he's got it in abundance. And he pushes people like me to think outside the box and look at innovative solutions. And he does it in a way that also can be a lot of fun."

Not all of Karl's ideas pan out. In 2004, he built the six-room Aurora Ice Palace, which was intended to be the only year-round ice hotel in the world. The hotel melted the following spring, prompting *Forbes* magazine to name it "the dumbest business idea of the year."

Karl in turn bottled a few drops of the melting hotel into thousands of commemorative vials that he sold for \$4.95 at the resort's gift shop. He later rebuilt the hotel, which now operates as an ice sculpture gallery with a working bar. In 2010, Karl found some

redemption in the matter when he was named the University of Alaska, Fairbanks, Business Leader of the Year.

The Ice Palace is also available for weddings, and Karl said he's personally officiated at 39 as he mixed appetizers for his guests at the recent tour's conclusion.

Speaking to a small crowd at the expo, Murkowski said she finds inspiration from each visit to the resort.

"I'm reminded as we do this walk around here, as Bernie says six different ways to sundown, 'There is no waste in nature,'" she said. "There's no waste in nature. So the waste that's out there is us — it's us. And we've got to be figuring out how we do better."

And in a nod to Karl's passion for inspiring youth, Murkowski also noted that the Barrow erosion-control project was the work of several local teenage girls.

"These kids are taking trash and they're turning it into treasure," she said. "They are the imagineers that are making things happen on the ground."

DAKOTA ACCESS:

Senate Dems call to stop project, impose climate 'test'

Hannah Northey, E&E reporter

Published: Thursday, October 13, 2016

A handful of top Senate Democrats today called on President Obama to immediately halt construction of the \$3.78 billion Dakota Access oil pipeline until a deeper review is conducted and subject all "significant" fossil projects to a climate test.

The letter from Sens. Bernie Sanders (I) and Patrick Leahy of Vermont, Ben Cardin of Maryland, Dianne Feinstein of California, and Ed Markey of Massachusetts urges Obama to direct the Army Corps of Engineers to require a full environmental impact statement for a portion of the 1,134-mile Dakota Access pipeline slated to cross Lake Oahe, to include "meaningful tribal consultation."

The Democratic senators, drawing a parallel between the Dakota Access and Keystone XL pipelines, also called for a review of all "significant" fossil fuel projects to vet their contributions to climate change, a plea repeatedly made by groups like Bold Alliance, 350.org and Oil Change International.

"All fossil fuels infrastructure projects of this significance must be subjected to a test to consider the long term climate impacts," the senators wrote. "As such, there must be a

serious consideration of the full potential climate impacts of this pipeline prior to the Army Corps of Engineers approving any permits or easements for the Dakota Access pipeline."

If built, the line would carry 570,000 barrels of crude oil per day from the Dakotas to Illinois.

The senators also joined their colleagues in the lower chamber in calling for the construction of the Dakota Access pipeline to be stopped in light of a federal appeals court decision that allows developers to move forward despite the need for a deeper review. Last month, 19 House Democrats called on Obama to rescind federal permits for the pipeline and embark on a new environmental review of the project (*Greenwire*, Sept. 30).

Rep. Raúl Grijalva of Arizona, the top Democrat on the House Natural Resources Committee, and his colleagues said the administration should go further than simply pausing construction on a portion of the line to require a new, more thorough review and tribal consultations.

"In light of the decision of the Court of Appeals for the D.C. Circuit to reject the Standing Rock Sioux Tribe's request for a temporary halt to construction, the project's current permits should be suspended and all construction stopped until a complete environmental and cultural review has been completed for the entire project," they wrote.

The senators welcomed the administration's decision to halt construction of the Dakota Access pipeline on federal land and under Lake Oahe pending a review of prior decisions under the National Environmental Policy Act and government-to-government consultation with the tribes. "In addition, we appreciate the administration's decision to reassess the way the federal government incorporates tribal concerns regarding permitting decisions more broadly," the senators wrote. "This is a longstanding problem, and these efforts must bring about long overdue, meaningful change."

But, they noted, pipeline developer Energy Transfer Partners has vowed to continue building the project.

"We support the tribes along the pipeline route in their fight against the Dakota Access pipeline project," the senators wrote. "It is imperative that the corps' permitting process be transparent and include public notice and participation, formal and meaningful tribal consultation, and adequate environmental review. Until that occurs, construction of this project must be halted."

Climate test

The letter reveals the growing reach of a national, grass-roots campaign to increase scrutiny and pressure Capitol Hill against the spread of oil and gas pipelines, a push sparked by debate surrounding the Keystone XL pipeline.

In calling for a climate "test," the lawmakers aligned themselves with groups like the Bold Alliance, Sierra Club, 350.org and the Natural Resources Defense Council, which laid out their [proposal](#) earlier this year for gauging greenhouse gas emissions tied to each new energy project proposal — be it a pipeline, power plant, compressor station or export terminal.

Doing so, the groups said, would help the United States stay in line with its obligations under the Paris climate agreement, aimed at limiting global temperature rise to well below 2 degrees Celsius.

"In addition to assessing the need for a project or policy in a scenario consistent with international climate goals, decision-makers should evaluate the greenhouse gas emissions associated with a project, assess the environmental impact of those emissions and evaluate their effect on national and international efforts to meet long term carbon reduction targets. In assessing the carbon pollution from any proposed project, the government should be able to show how that upward pressure is accounted for in their plan to meet their targets in the medium and long term," the green groups' proposal states.

In the letter, senators cited Oil Change International, an anti-fossil advocacy and research organization, saying the Dakota Access pipeline would add the equivalent in emissions of putting 21.4 million more cars on the road or building an additional 30 new coal plants.

The Democrats' message arrives within days of climate activists shutting down at least four pipelines carrying crude oil from Canada into the United States in a series of coordinated protests ([E&ENews PM](#), Oct. 11).

The Climate Disobedience Center said it targeted all five major oil pipelines across the U.S.-Canada border this week as a protest against the development of the Canadian oil sands and as a show of solidarity with Native Americans and others who are protesting the Dakota Access pipeline.

Industry and union leaders have called on protesters to steer clear of "vandalism and sabotage" and have said companies may need to harden their defenses.

CLIMATE:

EPA blasts FERC reviews, seeks 'definitive resolution'

[Hannah Northey](#), E&E reporter

Published: Thursday, October 13, 2016

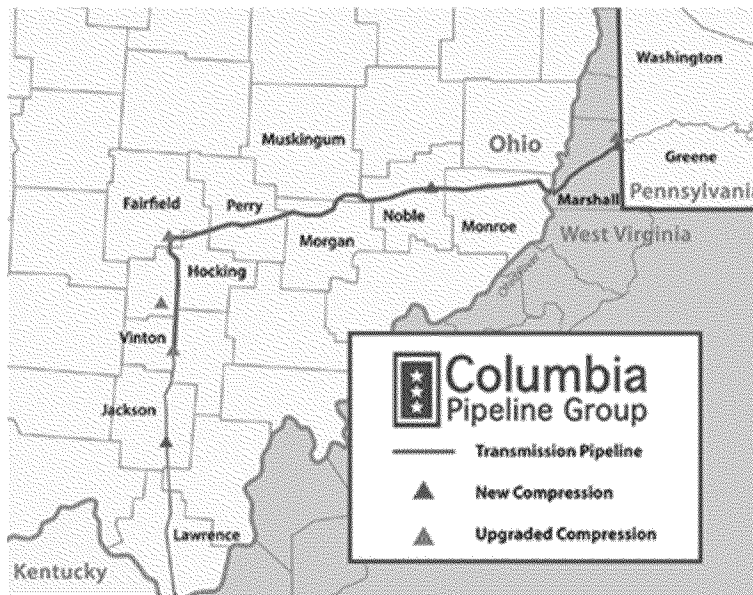
A \$1.4 billion natural gas project TransCanada Corp. has proposed in the heart of the Marcellus and Utica shale plays is pitting two federal agencies against each other over the depth and need for federal climate reviews.

U.S. EPA this week criticized the Federal Energy Regulatory Commission for not thoroughly studying indirect greenhouse gas emissions when it issued an environmental impact statement for the Leach XPress project last month. Columbia Gas Transmission and Columbia Gulf Transmission, which TransCanada purchased in July, are seeking federal permission to build a compressor station and run 160 miles through production areas in Ohio, Pennsylvania, West Virginia and Kentucky.

EPA in June said FERC's review was "insufficient," suggesting further analysis of alternative routes, ways to protect forested lands and aquatic resources, and environmental justice as well as for the commission to conduct and include an analysis of greenhouse gases and climate change.

And yet the commission, EPA said, appeared to disregard the recommendations and concerns from three of its regional offices throughout the Mid-Atlantic in its final EIS. FERC declined to comment.

Proposed Leach XPress project



[+] The \$1.4 billion proposed Leach XPress project would include the construction of about 160 miles of gas pipeline and compressor stations in southeast Ohio and West Virginia's northern panhandle. Map courtesy of the Columbia Pipeline Group.

"We view FERC's response to our comments as very concerning in light of CEQ's GHG Guidance and request a headquarters level meeting with us to seek a definitive resolution to this matter before you publish a Record of Decision (ROD) and so that you

do not continue to take this approach in additional [National Environmental Policy Act] documents," wrote Kenneth Westlake, chief of EPA's NEPA Implementation Section in the Office of Enforcement and Compliance Assurance.

FERC's final EIS, Westlake said, didn't include estimates of the indirect greenhouse gas emissions from TransCanada's proposed gas project and its alternatives, including effects on gas production and the combustion of the fuel. After noting that FERC disagreed with EPA's call for the agency to calculate indirect emissions, Westlake picked apart the agency's reasoning.

"Combustion of the product is a reasonably foreseeable effect of this project, and falls squarely within the obligation to consider indirect impacts under NEPA," he wrote. "The CEQ GHG Guidance makes this same point, and uses the end use product combustion of fossil fuel as a specific example of the kind of indirect effect that should be considered under NEPA."

Westlake also took issue with FERC's decision to compare the estimated gas emissions from the gas project to state emission levels, saying such an approach is not "appropriate" given the stated intent of the CEQ guidance. "EPA recommends that FERC follow the approach outlined by the CEQ's Final Guidance and remove comparisons to aggregated emissions levels," he wrote.

EPA's sharp rebuke and request for a high-level meeting is an interesting development in light of former FERC Commissioner Tony Clark's comments in August that the "jury's still a little bit out" on whether the Obama administration's new climate change guidance would substantially affect federal reviews of natural gas infrastructure ([*Greenwire*](#), Aug. 5).

Clark said the courts have consistently upheld the commission's environmental reviews of natural gas pipelines and export terminals under NEPA, and whether the new guidance could change that when environmentalists challenge the agency's decision in court is unclear. Clark, who has since left the agency, noted the guidance isn't binding and its fate may not become clear for years.

The EPA letter was hailed as a win for climate activists trying to stymie FERC's ongoing approval of natural gas pipelines, compressor stations and export terminals. The letter also drew a stiff defense from the project's developers.

"First and foremost, we want to assure all parties involved in the review of our proposed Leach XPress and Rayne XPress projects that we are committed to constructing and operating them in an environmentally responsible manner," said Scott Castleman, a manager for TransCanada's natural gas communications.

Castleman said that for both projects, comprehensive environmental studies were conducted and results were provided in filings to FERC, including detailed air studies; information about wetland, stream mitigation and migratory birds; and other items pointed out by EPA.

Castleman noted that EPA has made similar comments on other projects, and that FERC, the lead agency, determines the level of environmental detail included in the EIS and meets the requirements of NEPA.

"It is also worth noting that the EPA has recently submitted similar letters on a number of other FERC applications," he said. "We will continue working with FERC and other parties to provide information as needed."

ENERGY POLICY:

GOP heeds Koch-backed think tank on key votes — scorecard

Geof Koss, E&E reporter

Published: Thursday, October 13, 2016

A conservative think tank with ties to the Koch brothers is hailing dozens of GOP lawmakers for supporting free-market energy policies, while its new ranking of key votes shows Democrats opposing its positions in droves.

The American Energy Alliance's inaugural voting scorecard honors 35 senators and 105 House lawmakers — all Republicans — as "American energy champions" for scoring 90 percent or higher on "key votes" during the 114th Congress.

Blaming the Obama administration for a "regulatory onslaught," AEA President Thomas Pyle in a statement called it "vital that we grow the ranks of American Energy Champions in Congress who remain dedicated to free-market principles and will fight for less government intrusion into Americans' energy choices."

On the Senate side, the Energy and Natural Resources Committee's Mike Lee (R-Utah) was the lone senator to earn a perfect score. In addition to votes, the group weighed co-sponsorship of a bill to scrap the renewable fuel standard in the rankings.

The ranked votes included multiple amendments offered on the floor to various bills, including a "sense of the Senate" resolution opposing President Obama's landmark climate agreement with China, a Sen. Tom Udall (D-N.M.) proposal to implement a national renewable electricity standard, a Sen. John Hoeven (R-N.D.) bill blocking funds for U.S. EPA's Clean Water Act jurisdiction rule and legislation approving the Keystone XL pipeline.

While senators were judged by 15 votes, the results demonstrate broad agreement among a wide swath of the Senate GOP caucus and AEA's limited-government mindset on energy policy. After Lee, 17 Republican senators tied for second place, with 97 percent scores.

Senate Environment and Public Works Chairman Jim Inhofe (R-Okla.) scored 91 percent, the same score as Majority Leader Mitch McConnell (R-Ky.) and just above the 90 percent "champion" threshold.

Other key senators in the energy and environment arena failed to attain award status, including Energy and Natural Resources Chairwoman Lisa Murkowski (R-Alaska), who scored 78, and Energy and Water appropriator Lamar Alexander (R-Tenn.), who scored 65. Maine moderate Sen. Susan Collins had the lowest score among Republicans with 39 percent.

Among Senate Democrats, Energy and Natural Resources member Joe Manchin of West Virginia led his caucus with a score of 84 percent. He was followed by Sen. Heidi Heitkamp (D-N.D.) at 45 percent.

Democrats, overall, scored largely in the single digits. Vermont independent Sen. Bernie Sanders' 9 percent actually pushed him up to the higher ranks of the Democrats he caucuses with. He missed multiple votes while campaigning for president but voted against last year's omnibus spending bill, as AEA had urged.

Thirty-two Democrats registered zero scores, including Minority Leader Harry Reid of Nevada, Minority Whip Dick Durbin of Illinois, New York Sen. Chuck Schumer and Energy and Natural Resources ranking member Maria Cantwell of Washington.

In the House, AEA weighed the outcomes of 27 votes, including approval of the Keystone XL pipeline, lifting the crude oil export ban, passage of the "REINS Act" that would require congressional approval of major regulations and last year's omnibus spending bill.

Also factoring into the rankings is co-sponsorship of bills addressing key AEA priorities, including repealing the RFS and the wind production tax credit.

Fourteen Republicans achieved perfect scores, including the retiring Cynthia Lummis of Wyoming, who chairs the Oversight Subcommittee on the Interior, as well as prominent Freedom Caucus members, including chief rabble-rouser Rep. Jim Jordan of Ohio, Rep. Mick Mulvaney of South Carolina and Idaho's Rep. Raúl Labrador.

Speaker Paul Ryan (R-Wis.) scored 85 percent, while Majority Leader Kevin McCarthy (R-Calif.) came in at 84 percent. Majority Whip Steve Scalise of Louisiana achieved champion status with 94 percent.

Natural Resources Chairman Rob Bishop (R-Utah) also qualified as a champion with 91 percent, but Energy and Commerce Chairman Fred Upton (R-Mich.) missed the mark at 78 percent.

Reps. John Shimkus of Illinois and Greg Walden of Oregon, who are the top contenders

to succeed Upton as Energy and Commerce chairman, tied on the scorecard at 81 percent. Energy and Water appropriator Mike Simpson of Idaho also came in at 81 percent, while Interior and Environment Appropriations Subcommittee Chairman Ken Calvert of California scored 84 percent.

For Democrats, Minnesota's Collin Peterson topped minority scores with 67, followed closely by Rep. Henry Cuellar of Texas with 61 percent.

Scores of House Democrats scored zero percent, including Minority Leader Nancy Pelosi of California and Energy and Commerce Committee ranking member Frank Pallone of New Jersey. Minority Whip Steny Hoyer of Maryland voted with AEA 4 percent of the time, as did Rep. Raúl Grijalva of Arizona, the ranking member on the Natural Resources Committee.

COAL:

Colo. roadless rule, U.S. climate goals incompatible — enviros

Dylan Brown, E&E reporter

Published: Thursday, October 13, 2016

Environmental groups say three new reports provide more evidence that the Obama administration will undermine its own climate goals by reopening roadless Colorado national forests to more coal mining.

Nonprofit environmental law firm Earthjustice updated [comments](#) submitted to the Forest Service this week to include new research on the climate impacts of reinstating a controversial part of the Colorado roadless rule.

In 2012, federal and state leaders agreed 4.2 million acres of national forest in the state would stay undeveloped, but only with compromises like one allowing coal mining on 19,100 acres in the Gunnison National Forest southeast of Denver.

Under the so-called North Fork exception, the Forest Service approved Arch Coal Inc.'s request to expand the West Elk mine.

Earthjustice represents the environmental groups, including Sierra Club and WildEarth Guardians, that in 2014 persuaded a Colorado federal court judge to toss the exception and expansion until federal officials more accurately assessed potential climate impacts ([Greenwire](#), Nov. 12, 2014).

The Forest Service has since released updated analysis that supported its subsequent bid to reinstate the North Fork rule despite 130 million tons of carbon dioxide expected

to be produced by mining 170 million more tons at West Elk (*E&ENews PM*, Feb. 22). Companies looking to revive the struggling North Fork coal industry note regional emissions would amount to less than 1 percent of U.S. emissions, but environmentalists advocating for a local economic transition point out emissions would equal Colorado's entire current output (*Greenwire*, July 22).

The Forest Service expects to publish final analysis this fall, but before it moves, Earthjustice attorney Ted Zukoski said the agency needs to consider three new studies analyzing the baseline international goal brokered at last year's Paris climate summit — keeping global temperature rise below 2 degrees Celsius.

First, an Oil Change International study found existing fossil fuel operations alone, if allowed to operate for their projected life spans, would produce enough emissions to send temperature rise above 2 degrees Celsius (*Greenwire*, Sept. 22).

The second report, from Jeffery Greenblatt and Max Wei of the Lawrence Berkeley National Laboratory, said meeting U.S. climate commitments will require action beyond even U.S. EPA's controversial Clean Power Plan — a conclusion backed in the third report from the White House Council of Economic Advisers (*ClimateWire*, Sept. 28).

Zukoski also noted President Obama last week said: "The Paris Agreement alone will not solve the climate crisis."

"The Forest Service's proposed coal mine exception, the effect of which would be to allow Arch Coal and potentially other companies to conduct new coal exploration, acquire new leases, and to expand the life of the West Elk coal mine for additional decades, thus would undercut the nation's national commitments to prevent the worst impacts of climate change at a time when meeting those commitments requires prompt decisive action to limit new fossil fuel development," Zukoski wrote.

ENDANGERED SPECIES:

Enviros fight another mining proposal in jaguar range

Dylan Brown, E&E reporter

Published: Thursday, October 13, 2016



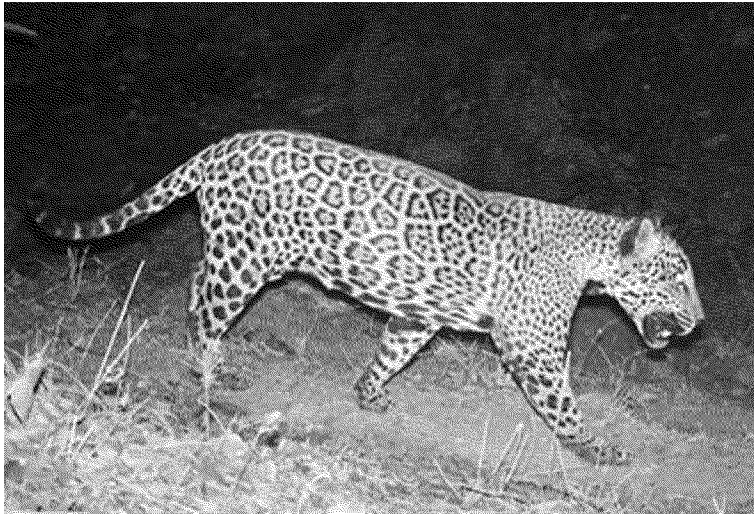
Exploratory drilling is already underway at another mining site within a mile of the proposed Hermosa-Taylor drilling area near the U.S.-Mexico border. Photo by Gooch Goodwin, courtesy of Defenders of Wildlife.

Environmentalists are gearing up to battle another mining proposal within the home range of America's only known jaguar.

Coronado National Forest officials have just started reviewing the proposed Hermosa project, exploratory drilling about 50 miles southeast of Tucson, Ariz., near the U.S.-Mexico border.

Arizona Minerals Inc. wants to drill eight holes in three places on national forestland to tap the Taylor deposit, a "significant" reserve of zinc, lead and silver ore, according to the Canadian company previously known as Wildcat Silver Corp.

But Defenders of Wildlife, the Patagonia Area Resource Alliance and other environmental groups are already demanding an in-depth assessment of risks that mining poses in a rugged part of southern Arizona famed for its "sky islands" — mountains rising from desert to moist forests that are home to a wide cross-section of wildlife.



Environmentalists are concerned about proposed mining exploration's impact on El Jefe, the nation's only known jaguar. Photo courtesy of USFWS.

El Jefe, the solitary male jaguar in the United States, is the environmentalists' focal point. But the area is home to other endangered species including ocelots and lesser long-nosed bats as well as threatened animals like the Mexican spotted owl and western yellow-billed cuckoo.

"It's just an incredibly invaluable biological resource; unfortunately it's under assault from mining," said Bryan Bird, Defenders of Wildlife's Southwest program director.

Mining has a long history in southern Arizona. The Hermosa project would be close to Harshaw, Ariz., a historic mining-turned-ghost town in the Patagonia Mountains.

In the Santa Rita Mountains, Canada-based Hudbay Minerals Inc. has proposed the Rosemont copper mine, but local Army Corps of Engineers officials recommended not issuing permits in July based on environmental impacts ([*E&ENews PM*](#), July 29).

The Hermosa project would also be less than a mile from both new drilling underway at the Trench mine and the on-hold Sunnyside project.

Last year, a challenge from the same environmental groups persuaded a federal judge to scrap Forest Service approval for Regal Resources Inc.'s Sunnyside copper mining project until a more thorough wildlife analysis was conducted ([*Greenwire*](#), Sept. 17, 2015).

While drilling at Hermosa would disturb less than 2 acres, environmentalists say the Forest Service must consult with the Fish and Wildlife Service to determine whether this project could harm critical wildlife habitat. The Hermosa project overlaps designated spotted owl and jaguar habitat.

"There is no question that the noise and visual impacts associated with the round-the-

clock drilling, excavation, and road reconstruction will adversely affect wildlife, recreation and other Forest uses," the groups wrote in their comments to the Forest Service.

Arizona Minerals could not be reached for comment.

In their comments, the environmental groups wrote that the Sunnyside decision confirmed that the cumulative impact on water, vegetation, wildlife and other natural resources from mining "past, present, and future" should be considered.

The groups urged federal officials to examine cumulative effects from all the projects on the Harshaw Creek watershed, where rainstorms have turned streams orange from acid mine drainage.

EPA:

IG prods agency to increase charge card use

Kevin Bogardus, E&E reporter

Published: Thursday, October 13, 2016

U.S. EPA's internal watchdog said the agency could bring in big savings if it used charge cards more often.

In a report released today, the EPA inspector general said the agency could save about \$592,000 per year if it used purchase cards instead of purchase orders. Using charge cards could cut down on administrative costs for EPA.

Auditors found that up to 1,714 purchases by EPA employees could have been made with purchase cards, not purchase orders, in fiscal 2015.

"By not utilizing the government purchase card to the maximum extent practicable, the EPA could be forfeiting savings in the form of administrative costs, refunds and point-of-sale discounts," said the report, which was signed by Inspector General Arthur Elkins.

EPA sets aside about \$39 million to \$46 million annually to buy supplies or services — such as computer equipment, furniture and consulting services — with purchase orders.

Under its regulations, the agency uses purchase orders to make acquisitions of \$150,000 or less. For purchases that are below \$3,000, EPA's preferred method of payment is a charge card.

Auditors found that the agency was not always using purchase cards when it could because of "inadequate policies, procedures and training," according to the report.

"As a result, competition, fairness and other economic opportunities may have been precluded," said the report.

The inspector general made several recommendations to EPA, including updating its policies and procedures and promoting greater use of purchase cards. Management generally agreed with those suggestions and has already corrected or planned to correct the issues.

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ENERGYWIRE

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ENERGYWIRE —Fri., October 14, 2016



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1.DAKOTA ACCESS:

Protesters under watch as pipeline inches closer

ST. ANTHONY, N.D. — These days, Cory Bryson feels like the hills have eyes. It's a sunny morning in October with temperatures stubbornly in the 20s, and Bryson, a business representative for the local office of the Laborers' International Union of North America, is checking on work sites along the route — some of them just reopened this week after a federal court lifted an injunction. The eyes in the hills are law enforcement officers and private security forces looking out for convoys of protesters intent on disrupting construction. After previous protests ended in violent altercations, local law enforcement enlisted help from departments as far away as Wisconsin.

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